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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

NOS. 347, 348 AND 349.

SCHOOL DISTRICT OF THE BOROUGH OF CENTERVILLE, Petitioner,

v.

JONES & LAUGHLIN STEEL CORPORATION, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE.

The Petition for Writ of Certiorari filed in these cases represents an attempt by a Pennsylvania school district (a political subdivision of the Commonwealth of Pennsylvania) to obtain this Court's review of a decision of the Supreme Court of Pennsylvania which invalidated three taxes, hereinafter described, on the ground that a legislative grant of taxing power to school districts did not empower the district to levy the taxes in question.

The cases arose out of statutory appeals by respondent, Jones & Laughlin Steel Corporation, to the Court of Quarter Sessions of Washington County, Pennsylvania, from several taxing resolutions adopted by petitioner school district, a third-class school district, under

authority of so-called Act 481 passed in 1947 by the Pennsylvania General Assembly (Act of June 25, 1947, P. L. 1145, 53 P.S. 2015.1 *et seq.*).

Act 481 enlarged the taxing powers of certain political subdivisions of the Commonwealth of Pennsylvania, including third-class school districts, but it makes certain specific exclusions from the taxing power so granted. Section 1 of the statute reads in part:

> "* * * taxes on persons, transactions, occupations, privileges, subjects, and personal property, within the limits of such political subdivision, as it shall determine, *except that local authorities shall not have authority by virtue of this Act to levy* * * * *any tax* * * *
>
> *"on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee* * * *
>
> "* * * *nor have authority* * * * *to levy, assess or collect a tax*
>
> *"on the privilege of employing such tangible property as is now or does hereafter become subject to a State tax.* * * *." (Arrangement and emphasis ours)[1]

The petitioner school district passed resolutions purporting to tax:

1. "* * * the privilege or transaction of all coal mined or severed from the ground of Centerville Borough * * * or for the privilege or

---

[1]Section 1 of the statute is printed as the Appendix to the Petition for Writ of Certiorari.

transaction of the transportation of all coal mined without the boundaries of Centerville Borough but transported within or through the boundaries of Centerville Borough * * *." (Cases No. 121 and 113 March T. 1949 in the Pennsylvania Supreme Court) (The taxes imposed by this resolution are referred to herein as the "severance tax" and the "transportation tax", respectively.)

2. "* * * the privilege or transaction of the dumping or unloading of all slate, stone, slag, cement and other waste material from the mining of coal or from the manufacturing of steel, * * *." (Case No. 119 March T. 1949 in the Pennsylvania Supreme Court) (The tax imposed by this resolution is referred to herein as the "dumping tax.")

On respondent's appeal from these resolutions the Court of Quarter Sessions of Washington County upheld the severance and dumping taxes and held the transportation tax invalid.

The orders upholding the severance and dumping taxes were appealed to the Supreme Court of Pennsylvania by Jones & Laughlin Steel Corporation, and the order invalidating the transportation tax was appealed to that court by the school district.

The Supreme Court of Pennsylvania held all three of the taxes to be invalid. The basis for the Court's ruling is succinctly set out in a single paragraph reading as follows:

"As was pointed out in the case of the Hampton Township resolution the Act of June 25, 1947, P. L. 1145, denied authority to the local bodies to impose

a tax on 'the privilege of employing such tangible property as is now or does hereafter become subject to a State tax.' Since Jones & Laughlin Steel Corporation pays a capital stock tax and also a corporate net income tax to the Commonwealth all of its property and assets are subject to a State tax, and therefore, by the express prohibition of the 1947 Act, the School District of Centerville Borough may not impose a tax on the privilege of mining coal or of conducting any operation which is a constituent part of such mining. The dumping of the waste materials of the mine is a necessary part of the process of mining, and therefore a tax on the privilege of that operation also falls under the ban of the statutory provision. Moreover, the dumping of waste on the corporation's own land is a use or employment of that land, and therefore, for that reason also, the privilege of such employment is not subject to local taxation. As far as the tax on the transportation of coal within or through the Borough is concerned, such a tax is clearly invalid because only such property is taxable as has an actual situs within the boundaries of the taxing district as distinguished from a merely momentary or temporary location there, and therefore it is generally held that property in transit through a taxing district is not subject to local taxation: see 61 C.J. 529, 530 [§ 642] g; 110 A.L.R. 724-726." (362 Pa. 400, 402, 67 A. 2d 378, 379)

The Court in the above quoted portion of the opinion refers to the Hampton Township resolution considered in *Hampton Township School District Case,* 262 Pa. 395, 67 A. 2d 376, decided the same day as the instant cases. The opinion in the *Hampton Township* case out-

lines at somewhat greater length the basis for the decision of the Supreme Court of Pennsylvania in the cases at bar. The Court there said:

> "The resolution, passed on July 6, 1948, imposed a tax of ten cents per ton 'upon the privilege, transaction or occupation of mining and/or severing from the ground coal * * * in Hampton Township,' and also a tax in that same amount 'upon the privilege, transaction or occupation *of bringing to the surface* of the ground coal within the limits of Hampton Township, mined or severed from the ground beyond the boundaries of Hampton Township.' * * *
>
> "Butler Consolidated Coal Company conducts the only coal mining operation in Hampton Township. It is a corporation paying a capital stock tax to the Commonwealth, which is a tax on all of its property and assets and a corporate net income tax which is likewise a property tax: *Lawrence Township School District Tax Case,* 362 Pa. 377, 67 A. 2d 372. Since the coal in place (and also when severed from the ground) is 'tangible property', and since, as just stated, it is subject to a State tax, it would seem inevitably to follow, from the express inhibition of the statute, that the School District may not tax the privilege of 'employing' it, that is, developing it for commercial purposes.
>
> * * *
>
> "As far as the section of the Hampton Township resolution is concerned which imposes the tax on the privilege, transaction or occupation *of bringing to the surface of the ground* within the limits of the Township coal mined or severed *from the*

ground beyond the boundaries of the Township, it is clear that bringing the coal to the surface is not only a component but an essential part of the operation of mining. According to Webster's New International Dictionary, to 'mine' is 'to get ore, metals, coal, or precious stones, out of the earth.' *The statutory prohibition of the right to tax the privilege of mining the coal necessarily includes and carries with it a prohibition of the right to tax the privilege of performing any constituent part of that operation."* (Italics ours)

ARGUMENT.

The Petition for Writ of Certiorari Makes no Argument Concerning the Severance Tax.

The Court's attention is respectfully directed to the fact that the Petition for Writ of Certiorari does not touch upon the decision of the Supreme Court of Pennsylvania invalidating the severance tax. This tax was the subject of the Appeal at 121 March Term, 1949, in the Supreme Court of Pennsylvania (No. 349 October Term, 1949, in this Court).

There is no Federal Question Involved.

General.

It is clear from the opinion of the Supreme Court of Pennsylvania (especially as such opinion is amplified by the *Hampton Township* case referred to therein) that the validity of no state statute is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States. It is also apparent that no title, right, privilege or immunity has

been specially set up or claimed under the Constitution, treaties or statutes of the United Sates. The jurisdictional basis for a Writ of Certiorari is not present in these cases (Section 1257 of the Judicial Code, 28 U.S.C. 1257. The Petition for Writ of Certiorari erroneously refers to Section 237 of the Judicial Code, 28 U.S.C.A. Sec. 344, repealed in 1948).

The validity of the state statute, Act 481, under which the taxes were sought to be imposed is not involved.

The Petition for Writ of Certiorari claims a denial of due process under the Fourteenth Amendment to the Constitution of the United States. No such question is involved, and no such question was raised by the petitioner in the courts of Pennsylvania. The petitioner did not even attempt to raise the question of due process through the filing in the Supreme Court of Pennsylvania of a petition for reargument (Rule 84 and Rule 86 of the Supreme Court of Pennsylvania).

The Rulings Questioned by the Petition Involve no Deprivation of Due Process.

The first question presented, as stated in the Petition for Writ of Certiorari, is as follows:

> "1. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax of five cents per ton for the privilege of dumping or unloading of slate, stone, slag or other waste materials from the mining of coal or from the manufacture of steel was void, and was said ruling in violation of the due process clause of the Federal Constitution?"

The Supreme Court of Pennsylvania held that the dumping tax (as well as the other taxes) was expressly prohibited by the enabling act since it was a tax on "the privilege of employing such tangible property as is now * * * subject to a State tax," i.e., the Pennsylvania Capital stock tax and the corporate net income tax. The decision rested entirely on the interpretation by the Supreme Court of Pennsylvania of the extent of a statutory grant of taxing power and such interpretation is binding on this Court. *Greenough v. Tax Assessors of Newport,* 331 U.S. 486, 489, 91 L. Ed. 1621, 1625 (1947); *Richfield Oil Corp. v. State Board of Equalization,* 329 U.S. 69, 84, 91 L. Ed. 80, 93 (1946); *Williams v. Kaiser,* 323 U.S. 471, 473, 89 L. Ed. 398, 401 (1944); *Pearson v. Probate Court of Ramsey County, Minnesota,* 309 U.S. 270, 273, 84 L. Ed. 744, 749 (1940). This principle applies to the interpretation of municipal powers. *Georgia Railway and Power Co. v. Decatur,* 262 U.S. 432, 438, 67 L. Ed. 1065, 1073 (1922); and *Railroad Commission of California v. Los Angeles Railway Corp.,* 280 U.S. 145, 152, 74 L. Ed. 234, 310 (1929).

A decision of the state court on state law cannot of itself be a denial of due process of law. *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673, 680, 74 L. Ed. 1107, 1113 (1929):

> "* * * the mere fact that a state court has rendered an erroneous decision on a question of state law, * * * does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court." (74 L. Ed. 1113)

As this Court said in *Clarke v. McDade,* 165 U.S. 168, 172, 41 L. Ed. 673, 674 (1897):

> "A general statement that the decision of a court is against the constitutional rights of the objecting party or against the 14th Amendment, or that it is without due process of law, particularly when these objections appear only in specifications of error, so called, will not raise a Federal question." (41 L. Ed. 674)

The petitioner must set up some particular constitutional right which has been invaded. Petitioner says:

> "* * * the Supreme Court, in holding this taxing resolution invalid, has disputed (*sic*) the taxing authority of its right under the Fourteenth Amendment to the Constitution of the United States. * * *" (pp. 6, 7)

This might suggest that petitioner claims a constitutional right to impose these taxes. It seems almost too elementary to document the principle that the petitioner has no constitutional right under the Fourteenth Amendment to impose such a tax. Petitioner school district has only those powers which are expressly given to it by the state and such additional implied powers as are necessary to carry out the express powers. *Mulligan v. School District of Hanover Twp.*, 241 Pa. 204 (1912); *Wilson v. Philadelphia School District*, 328 Pa. 225, 195 Atl. 90 (1937); *McQuillin, Municipal Corporations*, § 138; cf. *English v. Robinson Twp. School District*, 358 Pa. 45, 55 A. 2d 803 (1947).

The Petition for Writ of Certiorari states that in adopting these taxes petitioner relied upon a prior decision of the Supreme Court of Pennsylvania approving similar resolutions passed under the same enabling statute (pp. 7 and 8). Petitioner presumably refers to

English v. Robinson Township School District, supra. In that case the Supreme Court of Pennsylvania took original jurisdiction in a case in which the constitutionality of Act 481, the enabling act, was attacked. The enabling act was held to be valid but the authority of the school district to impose the particular resolution was not drawn into question. Furthermore, the tax in that case was imposed on an individual who was not subject to the state capital stock tax or the corporate net income tax. Therefore, the Pennsylvania Supreme Court in these present cases did not overrule or repudiate the principle of that case. A tax on strip mining not involving corporations was also sustained in *Dunkard Township School Tax Case,* 359 Pa. 605, 60 A. 2d 39 (1948).

However, in every case decided by the Supreme Court of Pennsylvania involving a tax under Act 481 on coal mining by corporations or on coal mined by corporations, the tax has been invalidated by the Court as a duplication of a state tax. In addition to the cases at bar, and the *Hampton Township Case, supra,* the following cases are cited to support this statement: *Lawrence Township School District Tax Case,* 362 Pa. 377, 67 A. 2d 372 (1949); *A. E. Dick Contracting Company v. Hazle Township School District,* 362 Pa. 387, 65 A. 2d 381 (1949); *Jamison Coal & Coke Co. v. Unity Township School District,* 362 Pa. 389, 66 A. 2d 759 (1949).

Even if the Pennsylvania Supreme Court had erroneously overruled earlier decisions upon which petitioner relied, no federal question is presented. *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673, 680, 74 L. Ed. 1107, 1113 (1929):

"* * * the mere fact that a state court has * * * overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court." (74 L. Ed. 1113)

The Contentions Advanced in the Petition with Respect to the Transportation Tax are Without Merit.

These contentions are enumerated in the following questions stated in the Petition:

"2. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax on the transportation of coal through the Borough was invalid because the property sought to be taxed did not have an actual situs within the boundaries of said School District, and was said ruling in violation of the due process clause of the Federal Constitution?"

"3. Did the lower court of Washington County err in holding that a tax on the transportation of coal through said school district was invalid because said tax interfered with interstate commerce? (Supreme Court did not rule on this question.)"

"4. Did the lower court of Washington County err in holding that a tax upon the transportation of coal through said school district was unreasonable as said tax may be subject to duplication by other adjoining districts, and was said ruling in violation of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United

States? (Supreme Court did not rule on this question.)"

With respect to the matter of situs it must be remembered that the taxing authority conferred by Act 481 was limited to taxable subjects "within the limits of such political subdivision."

It was argued by Jones & Laughlin before the Supreme Court of Pennsylvania that the transportation tax was a tax on the privilege of moving one's own property over one's own property and was tantamount to a tax on the property itself. *Peoples Natural Gas Co. v. Pittsburgh,* 317 Pa. 1, 175 Atl. 691 (1934); *Thompson v. McLeod,* 112 Miss. 383, 73 So. 193, L.R.A. 1918C, 893, Ann. Cas. 1918A, 674 (1916); *Dawson v. Kentucky Distilleries & Warehouse Company,* 255 U.S. 288, 65 L. Ed. 638 (1921); *Thompson v. Kreutzer,* 112 Miss. 165, 72 So. 891; *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 67 L. Ed. 322 (1922) (Reversing 274 Pa. 489); *Keator v. Clearview Coal Co.,* 256 Pa. 328, 331, L.R.A. 1917E, 672, 100 Atl. 820 (1917).

Based on the equivalence of the transportation tax to a property tax, the Supreme Court of Pennsylvania determined that the coal had no taxable situs within the limits of the political subdivision. An annotation on this subject appears in 110 A.L.R. at page 724. Among the cases cited therein is *Prairie Oil & Gas Co. v. Ehrhardt,* 244 Ill. 634, 91 N.E. 680 (1910). See also 61 C. J. 529 (Taxation § 642) and *Socony Vacuum Oil Company, Inc. v. Borough of Edgewater,* 23 N.J. Misc. 199, 42 A. 2d 775 (1945).

Moreover, a reference to the *Hampton Township* case makes it clear that the Supreme Court of Pennsyl-

vania considered respondent's transportation of coal over its own property in the course of the mining of such coal as an integral part of mining and, hence, not a subject for taxation because of the prohibition imposed by Act 481. In other words, the ruling on situs was an additional ground for invalidating the tax on the transportation of coal. It was not the only ground.

Petitioner seeks to weave the commerce clause into its argument concerning the transportation tax. Respondent's coal moves from the mine face in a Pennsylvania coal mine to a tipple in Pennsylvania, and it is destined for use at mills in Pennsylvania (Record 22a, 24a). The only way in which the question of interstate commerce became involved in the argument is indicated by the following portion of respondent's brief in the Supreme Court of Pennsylvania:

> "The resolution taxes the privilege or transaction of the transportation 'of all coal mined without the boundaries of Centerville Borough but transported within or through the boundaries of Centerville Borough whether said coal is loaded or unloaded within the boundaries of Centerville Borough or without the boundaries of Centerville Borough * * *." (Record 13a)
>
> "The Court found (Record 25a):
>
> '10. A large volume of coal other than appellant's is transported through the Borough of Centerville by common carrier in interstate commerce.'
>
> "The resolution makes no exception for interstate commerce.

"Judge Gibson (of the Quarter Sessions Court) in his opinion said (Record 43a):

> "The terms of the resolution are broad enough to include all coal transported through the Borough of Centerville by public carriers in the course of interstate commerce. This placing of a burden on interstate commerce by various municipalities and school districts is not permissible.' "

The Supreme Court of Pennsylvania did not rule upon any question relating to interstate commerce and no such ruling was necessary to the determination of the case.

In *Southwestern Bell Telephone Co. v. Oklahoma*, 303 U.S. 206, 212, 82 L. Ed. 751, 755 (1937), it was held:

> "We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. * * *" (82 L. Ed. 755)

The petitioner's contention that the ruling of the court as to the transportation tax was in violation of petitioner's rights under the Fourteenth Amendment was not raised in any court and was not necessary to a determination of the case. Since this argument was not

raised in the Pennsylvania courts, this Court has no jurisdiction to consider it. *Wilson v. Cook,* 327 U.S. 474, 480, 482, 483, 90 L. Ed. 793, 799, 800, 801 (1946); *Bailey v. Anderson,* 326 U.S. 203, 206, 90 L. Ed. 36 (1945); *Southwestern Bell Telephone Co. v. Oklahoma, supra; Honeyman v. Hanan,* 300 U.S. 15, 18, 81 L. Ed. 477, 479 (1937), appeal dismissed, 302 U.S. 375, 82 L. Ed. 312 (1937).

ARGUMENTS PRESENTED IN THE PETITION BASED ON THE ALLEGED IMPORTANCE OF THE CASE AND ON CONSIDERATIONS OF HARDSHIP ARE WITHOUT FOUNDATION IN THE RECORD, INVOLVE NO FEDERAL QUESTION, AND ARE WITHOUT MERIT.

The record contains no evidence to support the statements in the Petition for Writ of Certiorari (p. 6) "* * * that the dumping of slate material in said school district not only causes depreciation in assessed valuation of real estate but also causes the school district to receive less taxes, due to the decreased valuation of real estate. * * *," or that the dumping constitutes a fire hazard.

The pleadings contain no allegation and there is no evidence in the record to support the statements in the Petition for Writ of Certiorari that "It (respondent) at one time was the owner of hundreds of homes where coal miners lived and rented said homes. Today all of the homes have been sold and the coal company pays very little taxes. The school board was of the opinion that the corporation should pay its just share of taxes and, therefore, imposed this tax."

Neither of these arguments presents a federal question.

The Petition for Writ of Certiorari states that the decision will affect *hundreds* of political subdivisions which have passed similar taxes. There is nothing in the record to support this statement. As a matter of fact (and this statement is not based on the record), out of over 5,000 school districts, townships, boroughs, towns and cities given taxing power under Act 481, fewer than 100 have passed taxes on incidents of coal mining.

Furthermore, Act 481 was amended April 28, 1949, so as to leave no doubt that these taxes are prohibited. The amendatory act (Act No. 246 of 1949) prohibits a tax:

> "* * * on minerals * * * or on the preparation or processing thereof * * * or on any privilege, act or transaction related to the * * * preparation or processing of minerals * * * or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products; * * *"

This certainly makes the case of no future importance.

CONCLUSION.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Dated: October 27, 1949.

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